



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------------|
| 10/500,821 | 11/05/2004 | Hanns-Peter Muller | CS8248/LcA 35,595 | 8283 |
| 34469 | 7590 | 07/13/2007 | | |
| BAYER CROPSCIENCE LP Patent Department 2 T.W. ALEXANDER DRIVE RESEARCH TRIANGLE PARK, NC 27709 | | | EXAMINER GEORGE, KONATA M | |
| | | | ART UNIT 1616 | PAPER NUMBER |
| | | | MAIL DATE 07/13/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/500,821 | Applicant(s) MULLER ET AL. | |
| | Examiner Konata M. George | Art Unit 1616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1616

DETAILED ACTION

Claims 9-16 are pending in this application.

Action Summary

1. The rejection of claims 9-16 under 35 U.S.C. 103(a) over Botts et al. is being maintained for the reasons stated in the office action dated June 15, 2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Botts et al. (WO 99/00013).

Applicants claim a powder formulation having a particles size of under 125 microns consisting of a(a) one or more agrochemical active compounds, (b) one or

Art Unit: 1616

more biodegradable hydroxyl-containing polyesters and (c) optionally one or more additives.

Determination of the scope and content of the prior art

(MPEP §2141.01)

Botts et al. teach microparticles containing agricultural active ingredients entrapped in polymeric matrixes to form microparticles having a diameter range from about 0.2 to about 200 microns and that the formulation is applied to soil, seeds, plants, etc. (abstract). The microparticles comprises about 1 to about 50% by weight of the active agent and about 50 to about 99% by weight of the polymer matrix (page 2, lines 14-19). Page 3, lines 7-23 discloses examples of the polymer of which polyesters are mentioned. Page 13, lines 5-16 teach examples of the active ingredient of which the insecticide imidacloprid is mentioned. Page 16, lines 17-27 teach that inactive ingredients such as solvents, dispersant, adjuvants, etc. can be included in the formulation. Page 17, lines 8-28 teach a method of producing the particles by producing an oil phase, a water phase, and mixing the two phases to form an emulsion by stirring, homogenization or sonication, then the emulsion is stirred until the organic solvent has evaporated, then isolating the microparticles by washing, filtering and drying the microparticles in air.

Ascertainment of the difference between the prior art and the claims

(MPEP §2141.02)

Botts et al. do not teach the specific polyester as claimed or the temperature of the homogenization process.

Finding of prima facie obviousness

Rational and Motivation (MPEP §2142-2143)

It is the position of the examiner that since Botts et al. disclose the use of the polyester in a broad sense, the specific polyester would fall within the scope of the invention. It would have been obvious to one of ordinary skill in the art at the time the invention was made through routine experimentation to determine the appropriate homogenization temperature to achieve the desired powder formulation of the claimed invention.

Response to Arguments

3. Applicant's arguments filed August 15, 2006 have been fully considered but they are not persuasive.

Applicants argue that Botts et al. do not give details about which polyester would be suitable. It is the position of the examiner that since Botts et al. teach the broad category of polyesters, it can be assumed that all of the different types of polyesters would be suitable in the matrix and therefore would be obvious. Applicants argue that the process of making the composition is a melt process and that Botts et al. is directed

to an emulsion process. Page 17, line 11 of Botts et al. teaches that the microparticles can be made by a hot melt microencapsulation.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 9-12 and 14-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 9 discloses in (b) one or more biodegradable hydroxyl-containing polyesters having the functional language as claimed. The claims provide little guidance in the way of selecting a particular compound, or narrowing the range of candidates in order to find a suitable compound without the need for undue experimentation.

Conclusion

5. Claims 9-16 remain rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1616

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1616

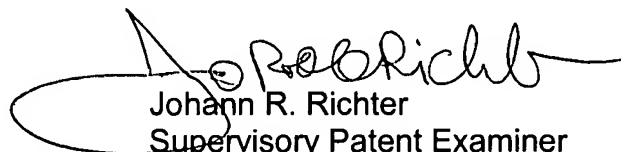
Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Konata M. George
Patent Examiner
Technology Center 1600


Johann R. Richter
Supervisory Patent Examiner
Technology Center 1600